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8 Attorneys for Plaintiff  
People of the State of California,  
9 ex rel. B.B. Blevins, Director, Department  
of Toxic Substances Control  
10

11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF ALAMEDA  
13  
14

15 PEOPLE OF THE STATE OF CALIFORNIA, ex  
16 rel. B.B. Blevins, Director, Department of Toxic  
Substances Control,

17 Plaintiffs,

18 v.

19 CITY OF OAKLAND, a Municipal Corporation;  
20 and DOES 1 through 100,

21 Defendants.  
22

CASE NO. RG 05216798

CONSENT JUDGMENT

23 1. Introduction

24 On June 8, 2005, plaintiff, the People of the State of California, ex rel. B.B. Blevins,  
25 Director, Department of Toxic Substances Control (hereinafter collectively "Department") filed a  
26 Complaint in the Alameda County Superior Court against the City of Oakland (Oakland or  
27 Respondent). The Department and Oakland now settle that action on the terms set forth in this  
28 Consent Judgment.

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL - 1 2005

CLERK OF THE SUPERIOR COURT  
By Wosen Mengiste, Deputy

1       2.   Complaint

2       2.1 The Complaint alleges that the City of Oakland, through the Oakland Fire Department  
3 ("OFD") violated provisions of the Hazardous Waste Control Law, Cal. Health & Safety Code  
4 sections 25100 et seq. ("HWCL") and the implementing regulations contained at Title 22  
5 California Code of Regulations ("22 CCR") sections 66001 et seq. with respect to the OFD Fire  
6 Station number 3 located at 1445 14<sup>th</sup> Street, Oakland, CA 94607 ("Site"). The Department  
7 alleges the following violations:

- 8           a. Failure to train employees and to document training - 22 CCR §§ 66265.16 and  
9           66265.16, subds. (d)(1), (2), (3), (4), and (e).  
10           - On and for a period of time prior to November 6, 2003, OFD failed to train  
11           employees in the proper handling and management of hazardous waste.  
12           - On and for a period of time prior to November 6, 2003, OFD did not have the  
13           following documents and records at the facility:  
14               (1) job title for each position at the facility related to hazardous waste  
15               management, and the names of the employees filling each job;  
16               (2) written job descriptions for each position listed;  
17               (3) written descriptions of the type and amount of both introductory and  
18               continuing training;  
19               (4) records that document that the training or job experience has been given  
20               to and completed by facility personnel;  
21               (5) training records on current personnel kept at the facility for three years.  
22           b. Storage of ignitable hazardous waste less than fifteen meters (fifty feet) from the  
23           property line - 22 CCR § 66265.176.  
24           - On and for a period of time prior to November 6, 2003, OFD stored six  
25           acetylene compressed gas cylinders less than ten feet from the property line.  
26           c. Failure to conduct inspections of storage site for discharges - 22 CCR § 66265.15.  
27           - On and for a period of time prior to November 6, 2003 OFD failed to conduct  
28           inspections of their storage site for conditions that may lead to the release of

hazardous waste to the environment. As a result, hazardous wastes were released into the environment.

- d. Failure to separate incompatibles – 22 CCR § 66265.177, subd. (c).

- On and for a period of time prior to November 6, 2003, OFD stored incompatible oxidizer waste with flammable waste without separating the wastes by means of a dike, berm, wall, or other device. OFD maintained non-secured oxygen compressed gas, non-secured acetylene compressed gas, and non-secured propane compressed gas cylinders in the hazardous waste storage area, with used paint and used oil and gasoline, without separating the wastes.

- e. Storage without authorization - Health & Saf. Code § 25201, subd. (a).

- On and for a period of time prior to November 6, 2003, OFD stored hazardous wastes for greater than ninety days without a hazardous waste permit or authorization from DTSC.

- f. Transportation of Hazardous Waste without authorization - Health & Saf. Code § 25163, subd. (a)(1) and 22 CCR § 66263.41.

- On and for a period of time prior to November 6, 2003 OFD transported hazardous waste within the City of Oakland without holding a valid registration and variance issued by DTSC.

- g. Transporting hazardous waste without shipping paper - 22 CCR § 66263.43, subd. (e).

- On and for a period of time prior to November 6, 2003, OFD failed to use a shipping paper containing all the information required by Title 49, Code of Federal Regulations, Part 172, Subpart C, when transporting hazardous waste to the Site.

- h. Storage of hazardous waste in leaking containers – 22 CCR § 66265.171

- On and for a period of time prior to November 6, 2003 OFD stored used oil, a hazardous waste, on the Site in a container that was leaking.

i. Failure to maintain documents and records at facility - 22 CCR

§§ 66266.53 and 66265.74.

- On and for a period of time prior to November 6, 2003, OFD failed to maintain a contingency plan at the Site.

- On and for a period of time prior to November 6, 2003 OFD failed to maintain at the Site hazardous waste manifests generated by Station number 3.

3. Admission:

3.1 Respondent does not admit the violations alleged above, except as follows:

Respondent admits the facts alleged above for the sole purpose of any subsequent action brought by the Department pursuant to the Hazardous Waste Control Law, Health and Safety Code Section 25100 et seq. within ten (10) years of the date of this Consent Judgment.

4. Jurisdiction

4.1 The Department and Respondent agree that the Superior Court for the County of Alameda has subject matter jurisdiction over the matters alleged in the Complaint and personal jurisdiction over the parties to this Consent Judgment.

5. Settlement of Disputed Claims

5.1 The Department and Respondent enter into this Consent Judgment pursuant to a compromise and settlement of disputed claims for the purpose of avoiding prolonged and complicated litigation and furthering the public interest.

6. Compliance Schedule

6.1. Within 30 days of the notice of entry of this Consent Judgment, Respondent will submit to the Department and to the California Division of Occupational Safety and Health ("Cal/OSHA") a list of current members of the OFD Hazardous Materials Response Team ("HMRT"), and their training levels per Title 8, California Code of Regulations ("8 CCR"), Section 5192, subdivision (q)(6). Respondent will update this list every six months thereafter and provide the Department and Cal/OSHA with an updated copy of the list for a period of two years from the notice of entry of Consent Judgment.

6.2 Within 30 days of the notice of entry of this Consent Judgment, Respondent will

1 submit for review a Training Plan and Curriculum of Training to the Department and Cal/OSHA.  
2 This curriculum shall meet the requirements of 8 CCR Section 5192, subdivisions (p)(7) and  
3 (q)(6), (7), and (8).

4 6.3 Within six months from the notice of entry of this Consent Judgment and for every six  
5 months thereafter until two years after the notice of entry of this Consent Judgment, Respondent  
6 shall submit to the Department and Cal/OSHA, the curriculum of training and training records  
7 for designated members of the OFD HMRT.

8 6.4 Within 30 days of the notice of entry of this Consent Judgment, Respondent shall  
9 submit to the Department and Cal/OSHA a Medical Surveillance Plan that meets the  
10 requirements of 8 CCR Section 5192, subdivisions (f) and (q)(9).

11 6.5 Within six months of the notice of entry of this Consent Judgment and for every six  
12 months thereafter until two years after the notice of entry of this Consent Judgment, Respondent  
13 shall submit to the Department and Cal/OSHA a status report on each designated member of the  
14 OFD HMRT. The status report shall include the date of each member's most recent physical  
15 examination and the approval of the examining physician for participation in the OFD Hazardous  
16 Materials Response Team as per 8 CCR, Section 5192, subd. (f)(7).

17 6.6 Submittals: Except as otherwise noted, all submittals from Respondent pursuant to this  
18 Consent Judgment shall be sent to:

19 Alan Ito  
20 Senior Hazardous Substances Scientist  
21 Department of Toxic Substances Control  
22 Task Force Support and Special Investigations Branch  
23 8800 Cal Center Drive  
24 Sacramento, CA 95826

25 and

26 Cal/OSHA  
27 District Manager  
28 Oakland District Office  
1515 Clay Street, Suite 1301  
Oakland, CA 94612

6.7 Respondent certifies that it has not transported hazardous waste outside of the City of  
Oakland. Respondent shall not transport hazardous waste without first obtaining proper

1 hazardous waste transporter authorization from the Department which may include applying for  
2 proper registration and insurance, obtaining the Department's approval, and/or compliance with  
3 Health and Safety Code, Section 25163, subd. (a)(1) requirements to become an emergency  
4 response transporter of hazardous waste.

5 6.7. Respondent shall neither transport nor receive for transport any hazardous waste  
6 without first complying with Title 22, California Code of Regulations, section 66263.43(e)  
7 requirements to use the proper shipping papers which contain all the information required by  
8 Title 49, Code of Federal Regulations, Part 172, subpart C.

9 6.8. Respondent shall store no hazardous wastes at any location, including the Site,  
10 that lacks the proper authorization and/or permits from the Department.

11 6.9. Upon receipt of appropriate authorization, Respondent may store hazardous  
12 wastes, but shall do so in compliance with all applicable laws, regulations, orders, and standards,  
13 including but not limited to Title 22, California Code of Regulations, section 66262.177(c)  
14 requirements to protect and segregate the incompatible wastes by means of a dike, berm, wall, or  
15 other device to separate and prevent mixing of the incompatible hazardous wastes.

16 6.10 Communications: All approvals and decisions of the Department made regarding  
17 such submittals and notifications shall be communicated to Respondent in writing by a Branch  
18 Chief, Department of Toxic Substances Control, or his/her designee. No informal advice,  
19 guidance, suggestions, or comments by the Department regarding reports, plans, specifications,  
20 schedules, or any other writings by Respondent shall be construed to relieve Respondent of its  
21 obligation to obtain such formal approvals as may be required.

22 6.11 Department Review and Approval: If the Department determines that any report,  
23 plan, schedule, or other document submitted for approval pursuant to this Consent Judgment fails  
24 to comply with or satisfy the Consent Judgment or fails to protect public health or safety or the  
25 environment, the Department may return the document to Respondent with recommended  
26 changes and a date by which Respondent must submit to the Department a revised document  
27 incorporating the recommended changes.

28 6.12 Liability: Nothing in this Consent Judgment shall constitute or be construed as a

1 satisfaction or release from liability for any conditions or claims arising as a result of past,  
2 current, or future operations of Respondent, except as provided in this Consent Judgment.  
3 Notwithstanding compliance with the terms of this Consent Judgment, Respondent may be  
4 required to take further actions as are necessary to protect public health or welfare or the  
5 environment.

6 7. Penalties for Noncompliance

7 7.1 Any violation by Respondent of the terms of this Judgment, including without  
8 limitation, failure to comply with the provisions of paragraph 6 above shall subject Respondent  
9 to costs, penalties and/or other remedies as provided by Health & Safety Code section 25188 and  
10 other applicable provisions of law.

11 8. Settlement Amount

12 8.1 Subject to the credit set forth in section 8 below, Respondent agrees to pay  
13 \$50,000 as a penalty pursuant to Health & Safety Code section 25189. Respondent shall pay  
14 \$30,000 within thirty (30) days of the notice of entry of this Consent Judgment. The remainder  
15 of the penalty shall be paid as set forth in paragraph 9 below.

16 8.2 Within thirty (30) days of the notice of entry of this Consent Judgment,  
17 Respondent shall pay \$25,000 to the Department as administrative costs.

18 8.3 Each payment shall be made by check, shall bear on its face the docket number of  
19 this proceeding, TF 02-01-940541, shall include the voucher to be separately supplied to  
20 Respondent by the Department, and shall be mailed to:

21 Department of Toxic Substances Control  
22 Accounting Office  
23 1001 I St., 23<sup>rd</sup> Floor  
P.O. Box 806  
Sacramento, CA 95812

24 Photocopies of the check shall be sent to:

25 Rick Robison  
26 Task Force Support and Special Investigations Branch  
27 Department of Toxic Substances Control  
700 Heinz Ave.  
Berkeley, CA 94710

28 and to

Vivian Murai, Esq.  
Office of Legal Counsel  
Department of Toxic Substances Control  
1001 I St., 23<sup>rd</sup> Floor  
P.O. Box 806  
Sacramento, CA 95812

8.4 Each party to this Consent Judgment shall bear the attorneys' fees and other costs of litigation it has incurred in connection with this Complaint and Consent Judgment.

9. Supplemental Environmental Project

9.1 As a Supplemental Environmental Project (SEP), Respondent shall implement the training programs attached hereto as Exhibit A, including providing instructors to teach this program to other fire departments at hazardous materials and environmental health conferences throughout the state, at no cost to the attending fire department.

9.2 Prior to implementing any of the training programs set forth in Exhibit A, Respondent will provide a copy of the training program to the Department for review as set forth below. The copy of the training program shall include the curriculum and training materials as well as any tentative dates and events for the training. Within two weeks of receipt of the training program, the Department will review the training program in order to determine that the program is in compliance with the appropriate requirements as set forth in Exhibit A. The Department will either approve the training program as submitted or request changes to the training program. Respondent shall make any requested changes prior to implementing the program.

9.2.1 The training programs shall be submitted to:

Stephen Sterling  
Chief, Task Force Support and Special Investigations Branch  
Department of Toxic Substances Control  
Task Force Support and Special Investigations Branch  
8800 Cal Center Drive  
Sacramento, CA 95826

9.3. For every two dollars expended by Respondent on any approved training program in the SEP, Respondent will receive one dollar of credit against the penalty amount, up to a maximum of \$20,000 in credit. In order to receive credit, all expenditures must be completed within two years of the notice of entry of this Consent Judgment and must be approved by the



1 Department as consistent with the terms of this Consent Judgment. In order to receive credit for  
2 the money expended on the SEP, Respondent shall maintain all necessary cost documentation of  
3 its expenditures and shall submit a record of its expenditures to the Department for verification.

4 9.4. At the conclusion of two years from the notice of entry of this Consent Judgment,  
5 Respondent shall pay to the Department the remaining \$20,000 in penalty set forth in paragraph  
6 8.1 minus any credit approved by the Department pursuant to paragraph 9.3 up to a maximum of  
7 \$20,000. Payment shall be made as set forth in paragraph 8.3 above and photocopies of the  
8 check shall be sent as set forth above.

9 10. Matters Covered by This Consent Judgment

10 10.1 This Consent Judgment settles all violations alleged in the Complaint and in the  
11 Investigation Report issued by the Department in this matter dated December 10, 2003. The  
12 provisions of this paragraph are expressly conditioned on complete performance by Respondent  
13 of its obligations under this Consent Judgment.

14 11. Matters Not Covered by the Consent Judgment

15 11.1 Except as expressly provided in this Consent Judgment, nothing in this Consent  
16 Judgment is intended, nor shall it be construed, to preclude the Department from exercising its  
17 authority under any law, statute or regulation. This Consent Judgment does not settle, conclude,  
18 or affect any claim which may be made by the Department against Respondent other than those  
19 specified in paragraph 2.1 above.

20 11.2 Except as expressly provided in this Consent Judgment, nothing in this Consent  
21 Judgment is intended nor shall it be construed to preclude any agency, department, board or  
22 entity of the State of California from exercising its authority under any law, statute, or regulation.

23 12. Application of Consent Judgment

24 12.1 This Consent Judgment shall apply to and be binding upon the Department and  
25 Respondent, and their directors, officers, employees, agents, successors and assignees.

26 13. Enforcement of Consent Judgment

27 13.1 The Department and Respondent agree that the Superior Court for Alameda  
28 County shall retain jurisdiction of this Consent Judgment and shall have jurisdiction to

1 implement and enforce its terms and conditions.

2 14. Modification of Consent Judgment

3 14.1 This Consent Judgment may only be modified upon written approval of the parties  
4 hereto and by order of the Court. In the event that any final and non-appealable judicial decision,  
5 legislative action or executive rulemaking changes the requirements pursuant to the HWCL and  
6 the implementing regulations, either party may move the Court for a modification to the Consent  
7 Judgment to conform the provisions of the Waste Management Procedures Plan to the  
8 requirements of the HWCL and the implementing regulations.

9 15. Authority to Enter Consent Judgment

10 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
11 by the party he or she represents to enter into this Consent Judgment, to execute it on behalf of  
12 the party represented and legally to bind that party.

13 16. Integration

14 16.1 This Consent Judgment constitutes the entire agreement between the parties and  
15 may not be amended or supplemented except as provided for in the Consent Judgment.

16 IT IS SO STIPULATED:

17 Dated:

CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

18  
19 By:

Stephen C. Sterling  
STEPHEN STERLING  
Branch Chief, Task Force Support  
and Special Investigations Branch,  
Department of Toxic Substances Control

22  
23 Dated:

CITY OF OAKLAND

24  
25 By:

Muelo Lee

26  
27 Its:

Deputy City Admin

1 implement and enforce its terms and conditions.

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6 the implementing regulations, either party may move the Court for a modification to the Consent  
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8 requirements of the HWCL and the implementing regulations.

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17 Dated:

CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

19 By:

20 STEPHEN STERLING  
Branch Chief, Task Force Support  
21 and Special Investigations Branch,  
Department of Toxic Substances Control

23 Dated:

CITY OF OAKLAND

25 By:

24 

27 Its:

26 Deputy City Admin

1 APPROVED AS TO FORM:

2 Dated: June 8, 2005  
3  
4

BILL LOCKYER  
Attorney General of the State of California  
THEODORA BERGER  
Senior Assistant Attorney General  
KEN ALEX  
Supervising Deputy Attorney General  
SUSAN S. FIERING  
Deputy Attorney General

7 By:

Susan S. Fiering  
SUSAN S. FIERING  
Attorneys for the People of the State of  
California ex rel. B.B. Blevins, Director,  
Department of Toxic Substances Control

11 Dated:

6/3/05  
12  
13

BURNAM BROWN

15 By:

John Verber  
JOHN VERBER, Esq.  
Attorneys for the City of Oakland

18 IT IS SO ORDERED:

19 Dated:

JUL - 1 2005  
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RONALD H. SADRAN  
JUDGE, SUPERIOR COURT



## EXHIBIT A

### SUPPLEMENTAL ENVIRONMENTAL PROJECTS

#### I. Hazardous Waste Operations Train the Trainer OSHA 40-HOUR HAZWOPER (General Site Worker)

The Oakland Fire Department will provide HAZWOPER 40 hour Train – the – Trainer training to hazardous materials response team members and first responders of Fire Departments within Northern California or at selected training conferences for a period not to exceed two years. Several trainee groups would be put together at different times and locations until the Oakland Fire Department has achieved the goal of training and certifying 45 instructors outside of the City of Oakland Fire Department. The training will be provided by Fetzone Environmental Training and Oakland Fire Department staff or a similar vendor acceptable to the Department of Toxic Substances Control. The benefit of this project is that it provides a means for individual Fire Departments to provide mandated Title 8 training in house thereby reducing agency training costs and maintaining safety training requirements.

**Location:** On-site: Oakland Fire Department, training conferences (i.e. CUPA Conference), FETZONE training facilities in Oakland and various Fire Departments within Northern California based upon student availability.

**Cost:** \$ 495.00 x 45 attendees = \$ 22,275

Course Materials

Manuals, training programs, tests: \$ 1,500 for 45 students

**Training Dates:** To be arranged.

## **II. Hazardous Waste Small Quantity Generator Training workshops**

The Oakland Fire Department will conduct four workshops to provide training and educational materials. The training material provided will be the Self – Study Hazardous Waste Generator Training developed by DTSC and San Mateo County Environmental Health. This training will be provided at no cost for businesses within Bay Area California CUPA Forum Region that generate hazardous waste.

**Location:** On-site: Oakland Fire Department  
Alternate sites in Oakland and the Bay Area

**Cost:** \$ 150.00 x 20 attendees per training session = \$  
3,000 x 4 sessions = \$ 12,000

### Course Materials

Manuals, training programs, tests: \$ 1,000 per  
session x 4 workshops = \$ 4,000

**Dates:** To be determined.